

Tom Cronk
CB Industries – Delta Inc.
1129 -24- Road
Grand Junction, CO 81505
ccigj@msn.com
970-640-5029

Senator Steve King
Colorado State Senator, District 7
200 E. Colfax Ave.
Denver, CO 80203
303-866-3077
steve.king.house@state.co.us

September 20, 2012

Steve,

Here are my thoughts on privatizing the CDPHE regulatory process. Thank you for considering this legislation. Basically, I propose the permit review process be completed by private firms qualified, licensed, and bonded to do the work. Before proceeding with the discussion, I will provide a brief summary of the existing permit process. These requirements are given in 6 CCR 1007-2, Part 1, Part A, Section 1.6. It's only four pages long so you can easily review the existing permitting criteria if you wish. A summary follows.

A person wishing to operate a solid waste disposal facility must obtain a Certificate of Designation (CD) from the County governing body in unincorporated areas and from the municipal governing body for incorporated areas. The application for the CD consists of required County/Municipality documents associated with Planning/Zoning, BLM easements, CDOT permits, drainage/utility clearances, etc., and other relevant local requirements. In addition to required local applications, the applicant must submit an Engineered Design and Operations Plan (EDOP) meant to address all requirements set forth in CDPHE regulations. The EDOP needs to be prepared and sealed by a Colorado Professional Engineer. In addition, it is required that certain parts of the EDOP be prepared and sealed by licensed professionals (e.g., the subsurface geologic assessment must be prepared by a licensed geologist, likewise the hydrogeologic assessment must be prepared by a licensed hydrologist). After the County/Municipality is satisfied the application is complete, the EDOP (five copies) is submitted to CDPHE for review. The EDOP is the only portion of the CD application reviewed by CDPHE and the EDOP is meant to address the technical aspects of facility design and operations that afford compliance with CDPHE regulations and requirements. The review is technical in nature and ideally not subjective, being based solely on compliance with the written regulations.

The EDOP review conducted by the State consists of two parts. The first part is a completeness review meant simply to determine if the EDOP is complete having addressed all portions of the regulations. The State has 30 days to finish the completeness review. The second part is the actual technical review of the document to see if the design and operations plan of the facility does indeed afford compliance with the regulations. The State must complete the technical review in 150 days or provide comments indicating where the document is inadequate in providing regulatory compliance.

In reality, a typical permit takes from 12-18 months to get through the review process. The State usually takes the full 150 days (which they consider working days although the regs don't state this) to provide deficiency comments. After the comments are addressed by the applicant, the State reviews the response to comments over another 150 working days and provides more deficiency comments. This process is repeated three to five times until the permit is finally approved. Our permitting process will enter its fourth year this coming January. As you are aware, the State feels the long review times are a result of their small staff being overworked and not able to provide a timely turnaround of the review.

To provide these reviews, the State invoices the applicant \$125/hr for CDPHE review time. Costs to the applicant associated with this review can range from \$5K to the maximum ceiling cost currently established by CDPHE. I believe the current maximum review cost is \$35K for a new permit and \$25K for a permit revision. We have currently paid the State \$22K and our permit is not done yet. The State has agreed to hold to a maximum cost of \$25K in our case as our permit is a revision and not a new facility.

I propose the review process (both the completeness portion and the technical review portion) of the EDOP be privatized. CDPHE already has provisions for privatization in their regulations if they are too busy to conduct the review. This process is summarized in Section 1.6.7 of the regs although I don't think it has ever been used. In the current process, several private firms are preapproved by the State to conduct these reviews. If the State is too busy, CDPHE asks one of these firms to provide an estimate of time and cost to complete the review. The estimates are given to the applicant and if the applicant approves, the review is started. If the applicant objects, a second firm is asked to offer a time/cost estimate and that is presented to the applicant. If the applicant objects to the second offer, the State conducts the review and the 30 day/150 day time limits are waived. Under the current regs, the State still controls the review process through preapproval of the private review firms, selection of the specific firm to do the review, and acting as a liaison between the applicant and the review firm.

I propose the review process be privatized and the review firm be accountable to the applicant (rather than to the State) through the free enterprise system. The permitting process would be patterned after the Planning/Zoning and Building permit process as follows.

1. The applicant would schedule a preapplication conference with the State to discuss the proposed project. The project would be reviewed by the applicant and State to determine its size and extent and which portions of the regulations are relevant. The

State would furnish the applicant a check list summarizing required submittals for the EDOP (i.e., facility operations description, site summary, geologic assessment, hydrological assessment, operations plan, compliance monitoring, closure/post-closure, required graphics, etc.). In addition, each submittal will be accompanied by a statement of who must complete and certify each portion (i.e., must be completed by a licensed professional engineer, professional geologist, professional hydrologist, etc.).

2. After the preapplication conference, the applicant will prepare the EDOP. In accordance with current regulations, the complete EDOP must be prepared under the direction of and sealed by a licensed professional engineer.
3. Upon completion of the EDOP, the applicant will hire an independent third party to review the EDOP and certify the document is complete and affords compliance with existing CDPHE regulations and guidelines. As based on the fact that existing regulations require the document be prepared and sealed by a licensed professional engineer, an independent licensed professional engineering firm will be acceptable to provide review of the document. The review firm must provide a written statement that the firm is qualified to provide an independent review and also verify that no conflicts of interest exist between the review firm and the applicant's project. The review firm must also be able to provide a bond and/or professional liability insurance sufficient to cover any errors and omissions associated with the project. Upon satisfactory completion of the review, the review firm will provide a written statement to CDPHE verifying compliance of the project with existing regulations.
4. Upon receipt of the independent review compliance verification, CDPHE will forward the EDOP and completed technical review to the County/Municipality for their review and pending action on the CD.

The applicant would be responsible for hiring and paying the review firm. Both the applicant and the review firm would be accountable to each other through conventional free market mechanisms. The review firm and hence applicant would be accountable to the State and citizens of Colorado through the existing professional engineering licensing process and bond/professional liability insurance.

I also propose that the applicant be given the option of allowing the State to conduct the review as dictated by current regulations and policy or being able to solicit a private review as discussed above. In this manner, the private review could be an option rather than mandatory.

Please remember that the County/Municipality is the governing entity that actually issues the permit. All the State is supposed to provide is the technical review of the project solely based on compliance with existing State regs. The County/Municipality approval process would not be affected in any way by this legislation. Additionally, the subjectivity associated with the current State review process would be eliminated by affording some accountability to the applicant and basing the review solely on the regulations as written. If the review process is privatized, it's important the State be made to act on that review. It will do no good if the State simply changes from reviewing/commenting on the EDOP to reviewing/commenting on the review of the review of the EDOP.

Finally, this legislation embodies good conservative principals in that it limits the size of government, returns accountability to the people, and creates private sector jobs.

Please let me know if you have any questions concerning this proposal or if I can be of any help to you in this effort.

Thank you,

Tom Cronk – CB Industries-Delta Inc.